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Mary Cottrell, Secretary
Department of Telecommunications and Energy
One South Station, Second Floor
Boston, MA 02110

RE: Inquiry to Establish Billing and Termination Practices, D.T.E. 06-8

Dear Secretary Cottrell:

On April 7, 2006, the Department of Telecommunications and Energy ("Department") opened a Notice of Inquiry ("NOI") to establish Retail Billing and Termination Practices ("Revised Practices") for telecommunications carriers operating in Massachusetts, and to develop and implement updated billing and termination practices for all telecommunications carriers offering retail service in Massachusetts to observe.

Pursuant to the Department's procedural schedule, the Attorney General submitted his initial Comments in response to the Department's NOI, on June 8, 2006. Verizon, Comcast, CMRS Providers, AT&T Communications, the National Consumer Law Center, Level 3 Communications, XO Communications Services, Miller Isar, Inc., and Conversant Communications also filed Comments. The Attorney General submits this letter as his Reply Comments.

In our Initial Comments, we explained that the Department's premise for updating the Practices, that telecommunications service markets are highly competitive, is both unsubstantiated and incorrect. We recommended that the Department maintain effective consumer protection and follow its Guiding Principles in developing any updated rules.

In their initial comments, the carriers[1] argued that the Department should let the competitive marketplace protect consumers. These parties asked the Department to refrain from developing specific rules, and instead rely only on its Guiding Principles to ensure that consumers are treated fairly in a competitive marketplace.

No Party Offered Support For the Contention That The Market For Telecommunications Services Is Highly Competitive.

No party submitted comments that supported the Department's assumption that the market is highly competitive for wireline service. While Verizon stated that alternatives to wireline service exist and benefit consumers, Verizon did not produce any evidence of a competitive market for wireline service.[2] As discussed in our initial comments, non-wireline service providers, like cable, VoIP, and wireless, do not provide meaningful competition to traditional wireline service providers. *See* AG Comments p. 4.[3]

The Guiding Principles Alone Are Not Sufficient To Provide Meaningful Consumer Protection.

The Department has set forth sound principles as a guide for updating the billing and termination practices. However, the framework is only meaningful if it is given some substance. For example, the Principle that "Customers must receive basic consumer protections from their telecommunications providers, even in a competitive marketplace" is an important premise for promulgating updated practices, but without specific rules, it fails to offer any protection at all.

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[1] Verizon, Comcast, CMRS Providers, and AT&T Communications.

[2] Verizon cites, as examples, customers' use of e-mail and instant messaging as evidence of competition. *Id*.

[3] The Department may rely on market forces to satisfy its statutory obligation to set just and reasonable rates only where the record affirmatively demonstrates the existence of workable competition and that competition provides adequate protection to consumers. The Department may not impose market-based rates without empirical proof that competitive forces remain extant. Rates for common carrier telecommunications services in Massachusetts must be just and reasonable. G.L. c. 159, §§ 14, 17 and 20; *see Farmers Union Cent. Exchange, Inc. v. FERC*, 734 F.2d 1486, 1510 (D.C. Cir. 1984). c*ert. denied sub. nom., Williams Pipeline Co. v. Farmers Union Cent. Exchange, Inc.*, 469 U.S. 1034 (1984). The Department has never investigated Verizon ". . . with an eye towards whether there is sufficient competition for Verizon's basic residential services to rely on market forces to ensure that rates for these services are just and reasonable." *Verizon*, D.T.E 01-31-Phase II, at 67 (2003). The Department has in fact denied Verizon flexibility with its rates "absent a Verizon demonstration of sufficient competition." *Id*. at 68.

The Department must develop actual obligations by promulgating specific rules, rather than depending on the guidelines offered by the Principles.

The Practices should continue to provide specific consumer protection requirements. The Department developed the Practices in 1977 in part to resolve the arbitrary way NYNEX-New England Telephone treated consumers. D.P.U. 18448, p. 11.[4] In response, the Department clearly delineated rules for handling certain consumer communications, disclosures and transactions. See Practices, Rules 5.15 to 5.20. The Department should continue these specific consumer protection requirements unless and until it promulgates new specific requirements.

Even assuming, as the carriers do, that competition exists, the Department should still provide consumer protection rules for telecommunications because a competitive marketplace will not necessarily protect consumers. As noted in the Attorney General's Initial Comments, our office has had to take action to address alleged anti-consumer practices by certain long distance and wireless carriers, as well as cable and satellite television operators. See Attorney General Initial Comments pp. 5-6.

Conclusion

The carriers, in their initial comments, offered no record evidence of a telecommunications market that is sufficiently competitive to protect consumers against unreasonable billing and termination practices. Before the Department promulgates new billing and termination practices on this premise, it should conduct a hearing to determine the state of competition in the market. Regardless of the outcome of such a hearing, the Department must promulgate specific rules to ensure consumers are adequately protected.

Respectfully submitted,

THOMAS F. REILLY
ATTORNEY GENERAL

*_/s/ Jonathan B. Engel_*
By: Jonathan B. Engel

[4] Among the matters the Practices addressed were: (1) account classification, and its consequences; (2) changes in account classification; (3) serious illness and emergency service restorals; (4) installment payment of one-time charges; (5) deferred payment arrangements as a possible means of paying overdue bills. D.P.U. 18448, p. 13.